

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SPIKE ENTERPRISE, INC.,

Respondent/Employer,

and

Cases

14-CA-281652

13-CA-282513

13-RC-281169

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 150,
AFL-CIO,**

Charging Party/Petitioner.

RESPONDENT SPIKE ENTERPRISE, INC.'S EXCEPTIONS TO ALJ IRA SANDRON'S

DECISION

Gregory H. Andrews
Sarah J. Gasperini
Elliot R. Slowiczek
JACKSON LEWIS, P.C.
150 N. Michigan Ave, Suite 2500
Chicago, IL 60601
(402) 391-1991
(402) 391-7363 FAX
Gregory.Andrews@jacksonlewis.com
Attorneys for Respondent

Spike Enterprise, Inc. (“Spike”), by its attorneys, Jackson Lewis P.C., pursuant to § 102.46 of the National Labor Relations Board’s (“NLRB”) Rules and Regulations, takes the following exceptions¹ to the Decision and Recommended Order Administrative Law Judge Ira Sandron (“ALJ”):

Complaint allegations V(a)

1. The finding that site-supervisor David Allen violated Section 8(a)(1) by allegedly (1) threatening employees with a reduction in wages and (2) threatening employees with discharge if they went on strike. (D. 19:33, 39). ²
2. The ALJ’s disregard of Lee-Ann Hill’s testimony and GC Ex. 6 which supports Allen’s claim that although he was creating a Powerpoint, he should not do anything until their lawyers reviewed it. (D. 8:45-46).
3. The finding that Allen violated Section 8(a)(1) by allegedly threatening employees with discharge during a one-on-one meeting with putative bargaining unit member Steve Selby. (D. 20:16).
4. The ALJ’s failure to credit, or even discuss, neutral witness Shelby Bitner’s testimony that she never heard Allen threaten Selby. (D. 9:38-39).
5. The ALJ’s conclusion that Allen said employees “would” be terminated if they went on strike, despite testimony that he said they “could” be terminated. (D. 10:22).

¹ Respondent also submits an accompanying Brief in Support of Exceptions to the Decision of the Administration Law Judge.

² Judge Sandron’s decision is designated as “D.”

6. The finding that Allen violated Section 8(a)(1) by allegedly telling employees he would have to more strictly enforce the rules during a one-on-one meeting with putative bargaining unit member Selby. (D. 20:21).
7. The AUJ's disregard of *Advanced Masonry Assocs., LLC v. Nat'l Labor Relations Bd.*, No. 18-11931 (11th Cir. Aug. 16, 2019).
8. The finding that Allen violated Section 8(a)(1) by allegedly saying Spike would never agree to a union during a one-on-one meeting with putative bargaining unit member Steve Selby. (D. 20:25).
9. The AUJ's disregard of *Ready Mix Inc.* 337 NLRB 1189 (2002).
10. The AUJ's conclusion that Allen's alleged statement about ExxonMobile, Spike's third-party customer, would never agree to a union. (D. 20:25).
11. The finding that Allen violated Section 8(a)(1) by allegedly saying he know who signed authorization cards during a one-on-one meeting with putative bargaining unit member Steve Selby. (D. 20:31).
12. The finding that Allen harassed Nick Holland. (D. 21:11).
13. The AUJ's conclusion that the fact that no sticker existed suggested Allen had an improper motive when he mistakenly requested Holland remove the non-existent sticker. (D. 21:14).
14. The AUJ's reliance on *Miklin Enterprises Inc.*, 361 NLRB 283 (2014).
15. The finding/conclusion that Allen was not a credible witness. (D. 7:24 ; 8:43 ; 10:12 ; 13:6 ; 30:24 ; 17:6).
16. The AUJ's finding that Allen's testimony as to his meeting with Selby was not credible because the AUJ did not find other of Allen's testimony credible. (D. 10:12).

17. The ALJ's conclusion that Respondent's witnesses Shelby Bitner, Roy Garner, Pitor Jesilowski, Martz, Jeff Mathis, and Schwartz were not credible because the ALJ believed – without support – that they were reluctant to testify in detail. (D. 9:1618).

Complaint Allegation VI(a), VI(c)

18. The finding that Spike violated Sections 8(a)(3) and 8(a)(1) when it discharged alleged discriminatee Robert Rossey because of his union activities. (D. 24:9).

19. The ALJ's failure to discredit Selby's claim that Allen said he fired Rossey because he was a "prick" because the General Counsel coaxed the answer from him on direct examination (D.____).

20. The ALJ's misinterpretation of GC Ex. 6 that Allen did not receive copies of the authorization cards. (D. 6: 16-17).

21. The ALJ's failure to realize that GC Ex. 14 included a hyperlink whereby a user could possibly view authorization cards. (D. 6: 16-17).

22. The ALJ's misplaced failure to understand Lee-Ann's typo with respect to the date stamp in her August 12 email. (D. 5:4-6).

23. The ALJ's conclusion that Allen would have immediately forwarded the Union's email to Jeff and Lee-Ann Hill. (D. 7:20).

24. The ALJ's failure to realize that Rossey was not terminated because he got a meter hit or because he did not report a meter hit fast enough. (D. 15:10-11).

25. The ALJ's failure to realize that Jesiolowski was not a supervisor when Rossey told him about the meter hit. (D. 14:9).

26. The ALJ's failure to realize that no witnesses ever saw Allen in the process area without fire resistant clothing. (D. 15:30-34).

27. The AUJ's failure to realize that safety expectations are higher in process areas where Rossey was seen without his fire-resistant clothing. (D. 15:30).
28. The AUJ's mischaracterization of the circumstances under which EPNR comes out to a site after a meter hit. (D. 12:35-36).
29. The AUJ's reliance on Rossey's claim that other employees took off their fire-resistant clothing. (D. 16:10).
30. The AUJ's disregard of Schwartz and Garner's testimony that they had never seen anyone not wearing fire-resistant clothing in the process area, supporting the argument the policy is strictly adhered to. (D. 15:29).
31. The AUJ's conclusion that every single one of Spike's witnesses who testified about wearing fire-resistant clothing must have been reluctant to admit that they violated the policy just because they were current employees. (D. 15:26-27).
32. The AUJ's disregard of Allen's testimony that, since Rossey's meter was off on August 11, he could not have had a meter hit on August 10. (D. 14:45).
33. The AUJ's disregard of Allen's detailed testimony of where Selby was working on August 12. (D. 13: 25-27).

Complaint Allegation VI(b), VI(c)

34. The finding that Spike violated Sections 8(a)(3) and 8(a)(1) when it discharged alleged discriminatee Cody Franzen because of his union activities. (D. 25:2).
35. The AUJ's finding that Allen treated Franzen differently because of his union activities, even though both Allen and Franzen testified that Allen showed him the new to site test answers. (D. 17:14, 23).
36. The AUJ's mischaracterization of both Allen and Franzen's testimony regarding the degree of assistance Allen offered. (D. 17:14, 23).

37. The AUJ's conclusion that Nick Holland's testimony was more plausible because Holland claimed he put partial answers down on the new-to-site test, even though multiple wrong answers were identical. (D. 18:19).

Complaint Allegation VIII(c)

38. The AUJ's failure to consider traditional remedies before concluding that a *Gissel* bargaining order is warranted. (D. __).

39. The AUJ's failure to conduct a throughout analysis on the lack of dissemination in deciding to issue a bargaining order under *Gissel*. (D. 26:11-14).

40. The AUJ's failure to rely on; *Desert Toyota*, 346 NLRB 118 (2005);); *NLRB v. Century Moving & Storage*, 683 F.2d 1087 (7th Cir. 1982)

41. The AUJ's disregard of witness testimony from three putative bargaining unit members, including Daniel MatisRoy Garner, Jeff Mathis, all of whom understood Rossey's discharge to be unrelated to his union activity.

42. The AUJ's disregard of the fact that seven potential bargaining unit employees went out on strike, obviating the need for a *Gissel* bargaining order. (D. 7:40 ; 25:39-41).

43. The AUJ's disregard of Respondent's witnesses' testimony regarding why they changed their support for the union. (D. 26:6).

44. The AUJ's disregard of Respondent's witnesses' testimony that they were afraid to testify truthfully about violating Spike's safety policies. (D. 15).

Objection 15

45. The AUJ's conclusion that Holland's ballot should be opened, even though the testimony shows it was never received by the Region. (D. 18:34-35).

Objection 16

46. The ALJ's conclusion that Cody O'Neal's ballot should be opened, even though the testimony shows it was never received by the Region. (D. 18:34-35).

/s/ Gregory H. Andrews
Gregory H. Andrews
Sarah J. Gasperini
Elliot R. Slowiczek
JACKSON LEWIS, P.C.
150 N. Michigan Ave, Suite 2500
Chicago, IL 60601
(402) 391-1991
(402) 391-7363 FAX
Gregory.Andrews@jacksonlewis.com
Attorneys for Respondent